

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

04-cr-181-bbc

v.

JERRY McCOY,

Defendant.

On July 16, 2013, I denied defendant Jerry McCoy's motion for post conviction relief under 28 U.S.C. § 2255 for his failure to show that he was sentenced in violation of the law. In the same order, I denied the issuance of certificate of appealability under 28 U.S.C. § 2253(c) and Rule 11 of the Rules Governing Section 2255 Cases in the United States District Courts. On July 29, 2013, defendant filed a motion for reconsideration which was denied on July 30, 2013.

At the same time as defendant filed his motion for reconsideration with this court, he filed with the court of appeals a request for a certificate of appealability under Fed. R. App. 22. The court of appeals forwarded defendant's request to this court for processing as

a notice of appeal so that the court of appeals could then consider defendant's motion for a certificate of appealability.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Defendant had appointed counsel during the criminal proceedings against him and I do not intend to certify that the appeal is not taken in good faith. Defendant's challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

ORDER

Defendant Jerry McCoy's motion to proceed in forma pauperis on appeal is GRANTED. A copy of this order will be forwarded to the court of appeals so that it can

address the appeal of the denial of the certificate of appealability.

Entered this 31st day of July, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge